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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,944	11/20/2003	William O'Malley	7257/117 (a)	9036

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EXAMINER

SMITH, CREIGHTON H

ART UNIT	PAPER NUMBER
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2645

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/717,944	<b>Applicant(s)</b> O'MALLEY ET AL.	
	<b>Examiner</b> Creighton h Smith	<b>Art Unit</b> 2645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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"This action is responsive to the petition filed 2/22/05 requesting withdrawal of the Office action dated 2/9/05. The petition is being treated as a request for reconsideration of the last action which is found to be persuasive. A review of the record finds a copy of the preliminary amendment filed 11/20/03. Accordingly, the Office action mailed 2/9/05 is hereby vacated. The new action on the merits of new claims 17-27 follows."

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 17-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6697476. Although the conflicting claims are not identical, they are not patentably distinct from each other because the elements of claims 17-27 are claimed in claims 1-16 of the patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salesky et al '313 in view of Kao.

Salesky et al disclose a conferencing system (10) that operates by streaming audio over the Internet. Streaming is disclosed in col. 4, lines 14 & 18, over the Internet is disclosed in col. 9, lines 1-5, and audio in col. 3, line 46. Salesky specifically discloses, col. 14, lines 52-56, that streams other than the shared-screen conferencing streams can carry information to allow shared or broadcast text chat, audio, video, drawing, whiteboarding, or other communications. In col. 18, lines 65-68, Salesky discloses that their data streams can be real-time shared-image conference data streams. Salesky discloses transcoders in claim 7 & 9. Salesky et al do not disclose the particulars of the conferencing system, that applicant has included into claim 1 such as an audio mixer that sums the plurality of digitized audio signals. However, Kao does disclose a mixer that mixes a first signal with a local signal to produce a first transmit mixed signal, abstract. Kao later discloses in col. 3, lines 53-56, that this can be accomplished by analog techniques (e.g. a summing amplifier or by audio mixer) or by digital techniques which are equivalent or by combinations of the two approaches. To have provided Kao's teaching of the mixer that receives a plurality of audio signals and sums them to provide a summed signal into Salesky would have been obvious to a person having ordinary skill in the art because each and every conferencing system has a mixer that sums up all the conference signals from all the conferee participants.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brunsgard, Vertthein et al, & Schoo et al

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Any inquiry concerning this communication should be directed to Creighton h  
Smith at telephone number 308-2488.

11 May '05

A handwritten signature in black ink, appearing to read "Creighton h Smith". The signature is written in a cursive, flowing style with a large initial "C".

Creighton h Smith  
Primary Examiner  
Art Unit 2645